

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PAUL SYLVA,

Plaintiff,

v.

CULEBRA DIVE SHOP, et al.,

Defendants.

Civil No. 04-1646 (JAG)

AMENDMENT TO REPORT AND RECOMMENDATION

On August 2, 2005, the undersigned issued a Report and Recommendation (Docket No. 108) recommending the Motion for Summary Judgment filed by the Dive Shop and the Cantwells (Docket No. 16) be DENIED without prejudice; ING's Motion for Summary Judgment (Docket No. 26) be GRANTED; all claims against ING be DISMISSED with prejudice; and that Dockets 44, 45 and 55 be STRICKEN from the record, for failure to comply with Local Rule 7.1 (c).

It was improvidently stated in the Report and Recommendation that the Dive Shop and the Cantwells failed to request leave from Court to file a Reply (Docket No. 44), as required by Local Rule 7.1(c), when in fact the Dive Shop and the Cantwells requested leave prior to the filing of the Reply and leave was granted (Docket No. 35 and 37). Thus, the Report and Recommendation is hereby amended *nunc pro tunc* as to this matter. In addition, the recommendation that the Reply (Docket No. 44) be stricken from the record is left without effect. Accordingly, we now consider the Reply for purposes of the Report and Recommendation.

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The Dive Shop and the Cantwells claim in their Reply that the language of the waiver signed by Ms. Wieditz remains uncontested, the waiver in question is valid and plaintiff has failed to establish that under Puerto Rico Laws the waiver is invalid. In addition, the Dive Shop and the Cantwells contend the waiver is clear, unequivocal and is not subject to various interpretations. They aver that the true nature of the waiver was to hold harmless a person for a future act, thus, the waiver in question remained effective until after Ms. Wieditz in fact dove with the Dive Shop. (Docket No. 44).

A review of the Dive Shop and the Cantwells' Reply shows it reiterates in more detail the arguments originally raised by them in support of their Motion for Summary Judgment (Docket No. 16) and which were considered by the undersigned and addressed in the Report and Recommendation (Docket No. 108, part IV A). Thus, after taking into account the arguments raised in the Dive Shop and the Cantwells' Reply, the original recommendation made by the undersigned in the Report and Recommendation, that their Motion for Summary Judgment (Docket No. 16) be DENIED without prejudice, **STANDS**.

Finally, the sentence at page 20 of the Report and Recommendation which reads "[h]owever, before she arrived, the crewman on board raised anchor **without due care** moved the vessel towards two drifting swimmers" is hereby amended *nunc pro tunc* to read as follows: "[h]owever, before she arrived, the crewman on board raised anchor and moved the vessel towards two drifting swimmers."

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In accordance with the foregoing, the Report and Recommendation issued on August 2, 2005 (Docket No. 108) is hereby amended *nunc pro tunc* to reflect the above. Otherwise, the Report and Recommendation remains unchanged.

IT IS SO RECOMMENDED.

San Juan, Puerto Rico, this 16th day of August of 2005.

s/CAMILLE L. VELEZ-RIVE
CAMILLE L. VELEZ-RIVE
UNITED STATES MAGISTRATE JUDGE